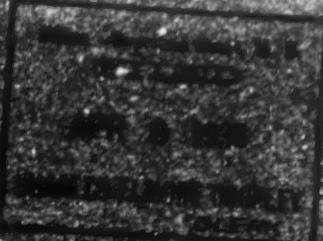


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Judge Raymond Edward Ladd, Jr., Presiding

**STARMANS, MURRAY & STARMAN, ATTORNEYS FOR PLAINTIFFS
D. F. STARMAN, ANTHONY M. STARMAN, AND
Joyce F. STARMAN, DEFENDANTS**

**S. P. VINE, CHIEF CLERK OF THE CIRCUIT COURT OF
THE STATE OF NEW MEXICO**

**ON PETITION FOR A Writ of CERTIORARI TO THE UNITED
STATES CIRCUIT COURT FOR APPEAL OF THE TWELFTH
CIRCUIT**

BRIEF FOR THE DEFENDANTS IN OPPOSITION



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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 877

STAHHMANN FARMS, A CO-PARTNERSHIP COMPOSED OF
D. F. STAHHMANN, ANNA M. STAHHMANN, AND
JOYCE F. STAHHMANN, PETITIONER

v.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR
THE DISTRICT OF NEW MEXICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 31-35) is reported at 93 F. (2d) 902. The findings of fact and conclusions of law entered by the District Court are printed in the record at pages 16-17.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 27, 1937 (R. 35). A peti-

tion for rehearing (R. 37-45) was filed January 25, 1938, and was denied by the Circuit Court of Appeals on February 5, 1938 (R. 47). The petition for certiorari was filed March 16, 1938. The jurisdiction of this Court is invoked under Section 229 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner, a producer of cotton who paid the tax imposed by the Bankhead Cotton Act upon the ginner who ginned cotton grown by the petitioner, can maintain an action for recovery of the tax so paid.

The petitioner also asks the Court to pass upon the constitutionality of the Bankhead Cotton Act, a question not passed upon by the court below because not necessary to its disposition of the case.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Act of April 21, 1934, and of Treasury Regulations 84 are printed in the Appendix, infra; pp. 16-31.

STATEMENT

This action was instituted by the petitioner in the United States District Court for the District of New Mexico to recover the sum of \$13,064.52 paid to the respondent under authority of the Bankhead Cotton Act, c. 157, 48 Stat. 598. The action was based upon the alleged unconstitutionality of that Act (R. 1-3).

The respondent, in an amended answer, denied that the Act was unconstitutional and affirmatively alleged as a further defense that the petitioner was not liable under the statute to pay the amount sued for; that if it paid to the respondent the amount sued for it did so in discharge of a liability imposed upon a person or persons other than the petitioner; and that, therefore, the petitioner was not entitled to maintain the action for recovery of the amount paid (R. 5-7).

A jury trial was waived in writing (R. 5) and the cause submitted to the court for decision upon a written stipulation of facts (R. 7-10) which was approved by the court (R. 11). A request for special findings of fact and conclusions, and a motion for judgment, were filed by the respondent (R. 11-15) and were denied by the court. The respondent duly excepted (R. 16, 27). Upon consideration, the court made findings of fact and conclusions of law in favor of the petitioner and entered judgment for the petitioner on January 31, 1937 (R. 18).

On an appeal to the Circuit Court of Appeals for the Tenth Circuit that court, basing its decision upon the affirmative defense pleaded by the respondent, held that the tax imposed by the Bankhead Cotton Act was a tax imposed upon the ginning of cotton; that the ginner was made liable for the tax; that this petitioner, not being liable for the tax in question, made payment as a volunteer and

that it, therefore, was not entitled to maintain this action for recovery. In view of its decision on this question the court refrained from passing upon the alleged unconstitutionality of the Bankhead Cotton Act (R. 31-35.)

The facts alleged in the complaint and admitted in the respondent's amended answer, supplemented by the written stipulation of facts filed by the parties, are briefly as follows:

During the crop year 1934-1935 the petitioner was engaged in Dona Ana County, New Mexico, in the growing of cotton, and was and has been for many years prior thereto cultivating in excess of 2,000 acres of land. During that crop year it produced a quantity of cotton in excess of the allotment for which, under the terms of the Bankhead Cotton Act, it was entitled to obtain tax exemption certificates. The petitioner delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, to be ginned. The Santo Tomas Gin Company ginned the petitioner's cotton and filed monthly returns with the respondent for the months of October, November, and December 1934, as the ginner of petitioner's cotton. The returns thus filed showed a tax due in the amount of \$13,064.52. Of this amount the sum of \$11,193.99 was assessed against the Santo Tomas Gin Company in December 1934, and was paid to the respondent by checks drawn by Stahmann Farms (the petitioner) payable to the Collector of In-

ternal Revenue. These checks were dated November 27, 1934, November 28, 1934, and December 13, 1934, and were for the respective amounts of \$1,131.44, \$1,550.23, and \$512.32. The sum of \$1,870.53 was assessed against the Santo Tomas Gin Company in January 1935, and was paid to the respondent by a check for that amount drawn by Stahmann Farms (the petitioner) payable to the Collector of Internal Revenue and bearing the date January 19, 1935 (R. 1, 2, 6, 7-8).

The Santo Tomas Gin Company declined to deliver the ginned cotton to the petitioner until the above assessments against it were paid. The respondent applied these payments by petitioner against the assessments outstanding on its books under the name of Santo Tomas Gin Company, Mesquite, New Mexico (R. 8-9).

On March 6, 1935, the petitioner filed a claim for refund of \$13,064.52 with the Collector of Internal Revenue for the District of New Mexico, its claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act. The Commissioner of Internal Revenue rejected this claim on August 22, 1935 (R. 9). The instant suit followed.

ARGUMENT

The petitioner asserts that a writ of certiorari should be granted in this case for the reason that the court below decided important questions of Federal law which have not been, but which should

be, settled by this Court, and for the further reason that the court below erred in failing to hold the Bankhead Cotton Act unconstitutional (Br. 10-13).

The only question decided by the court below is whether the petitioner may, under the facts, maintain this action for recovery of taxes assessed and collected under authority of the Bankhead Cotton Act (R. 31-35). We submit that the court below correctly held that the petitioner is not entitled to maintain this action, and that it did not err in failing to pass upon the questions relating to constitutionality of the Act.

1. Section 4 (a) of the Bankhead Cotton Act imposed a tax "on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect." Section 4 (c) provides that "Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done." It is further provided that the tax shall, without assessment or notice "be due and payable to the collector at the time so fixed for filing the return." The Commissioner's regulations were in accordance with these provisions. See Treasury Regulations 84 (1935 Edition), Articles 7, 8, 11, and 12. The only exception to these provisions, and which is not applicable under the

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of this case, is contained in Section 4 (f) which provides that the tax shall not be collected upon the ginning of cotton which is to be stored by the producer either upon his farm or at some other place permitted by regulation. In such cases the payment of tax is postponed until bale tags are obtained, either by payment of the tax or surrender of tax exemption certificates. See Articles 13 and 21 of Regulations 84 (1935 Edition) covering returns by the ginner and producer and the payment of tax in such cases.

Under the law and the Commissioner's regulations the Santo Tomas Gin Company was required to, and did make returns of the tax due upon the ginning of petitioner's excess cotton. That company was also made liable by the Act and the regulations for payment of the tax, which, however, was in fact paid by the petitioner.

With respect to recovery of taxes collected under the Bankhead Cotton Act, Section 14 (a) of the Act made applicable to the taxes imposed under the Act all provisions of law, including penalties, applicable with respect to taxes imposed by Section 800 of the Revenue Act of 1926, in so far as applicable and not inconsistent with the provisions of the Act itself. Thus Section 3220 of the Revised Statutes ¹ authorizing the Commissioner to credit or refund

¹ As amended by Section 1111 of the Revenue Act of 1926, 27, 44 Stat. 9, and Section 619 (b) of the Revenue Act of 1928, c. 832, 45 Stat. 791 (U. S. C., Title 26, Secs. 1670, 1676).

any amount erroneously or illegally collected under the Act was made applicable. Section 20 of the Act authorized the filing of refund claims and the maintenance of suits to recover where refund was not made by the Commissioner.

The Act of February 10, 1936, c. 42, 49 Stat. 1106, repealed the Bankhead Act in its entirety, and without any saving clause. There is, therefore, considerable doubt that petitioner can rely on the provisions for refund and the maintenance of suit. But, at this stage, it is unnecessary to explore this field, for the Santo Tomas Gin Company was the party made liable for the tax collected on the ginning of the cotton here involved, and is the only party which was given authority to claim a refund or sue for recovery. There is no legal basis upon which this petitioner could maintain an action for recovery. Moreover, to permit the petitioner to recover would not necessarily preclude recovery of the same amount by the ginner, if he were otherwise entitled to sue and recover the taxes paid.

In so far as the relationship between the petitioner and the respondent is concerned it is clear that payment was made by the petitioner as a mere volunteer, and was made to discharge a liability asserted against Santo Tomas Gin Company. No claim against petitioner was made, or could have been made, by the collector. Petitioner, by the payment, discharged no liability of its own. Under such circumstances the court below correctly held

that the petitioner cannot maintain this action to recover. The decision is fully supported by the authorities. See *Ohio Locomotive Crane Co. v. Denman*, 73 F. (2d) 408 (C. C. A. 6th), certiorari denied, 294 U. S. 712; *Clift & Goodrich v. United States*, 56 F. (2d) 751 (C. C. A. 2d), certiorari denied, 287 U. S. 617; *Wourdack v. Becker*, 55 F. (2d) 840 (C. C. A. 8th), certiorari denied, 286 U. S. 548; *Mahoning Inv. Co. v. United States*, 3 F. Supp. 622 (C. Cls.), certiorari denied, 291 U. S. 675; *Daube v. United States*, 59 F. (2d) 842 (C. Cls.), affirmed on another issue, 289 U. S. 367; *Combined Industries, Inc. v. United States*, 15 F. Supp. 349 (C. Cls.).

In *Wourdack v. Becker*, *supra*, a former president of two dissolved corporations was denied a recovery of additional taxes assessed against the corporations and voluntarily paid by him. In *Daube v. United States*, *supra*, the plaintiff had been allowed an over-assessment of a certain sum which he directed the Commissioner to credit against taxes due from a partnership of which he was a member. The Court of Claims held that he could not recover the amount applied against the partnership tax although the credit was made after the period for collecting from the partnership had expired. In granting certiorari the Supreme Court limited its review to another question in the case. 288 U. S. 597. In *Clift & Goodrich v. United States*, *supra*, a corporation organized in

1919 to take over the assets and business of a partnership voluntarily paid a tax which should have been paid for the partners for 1918 and the court denied recovery. In the other cases cited one corporation voluntarily paid the tax of another, either a subsidiary or a predecessor, and the courts refused to permit recovery.

In *United States v. Johnston*, 268 U. S. 220, the defendant, who had collected admission taxes from his patrons, and who was required by statute to pay such taxes over to the United States, had been convicted on a charge of embezzlement because he had failed to pay to the Collector the sums collected. The taxes had actually been paid by the defendant's patrons, as was the tax liability of Santo Tomas Gin Company paid by the petitioner, and the prosecution based its charge upon misappropriation of funds held for the benefit of the Government. This Court held that conviction on a charge of embezzlement was erroneous for the reason that the taxpayer was a debtor and not a bailee and that the retention by him of the funds collected could not amount to embezzlement. In the course of its opinion the Court declared (pp. 226-227):

* * * it seems to us that under this law the person required to pay over the tax is a debtor and not a bailee. The money paid for the tax is not identified at the outset but is paid with the price of the ticket that belongs to the owner of the show.

* * * Reports are required only once a month, §§ 802, 502, which does not look as if the Government were dealing with these people otherwise than with others answerable for a tax. Further argument seems unnecessary upon this point.

There are, of course, certain exceptions to the rule laid down by the above cases; but none of them is applicable here. These exceptions arise in cases such as *White v. Hopkins*, 51 F. (2d) 159 (C. C. A. 5th), where the tax was apparently demanded from the plaintiff as a transferee and was actually paid to the Collector under duress. Cases in which the plaintiff succeeds to the right of the taxpayer by operation of law may also be considered an exception although clearly inapplicable under the facts of this case.

Petitioner does not challenge the correctness of the authorities relied upon by the court below. Nor does he cite any decision as being in conflict with the decision below. Collection of the amount here involved was not made under circumstances which would make the decisions relied upon by the petitioner (Br. 35-43) applicable here. The amount involved was not assessed against the petitioner and no demand for payment was made upon petitioner by the respondent. If any compulsion was exerted upon petitioner it was by the ginner whose liability petitioner discharged and not by the taxing officials.

The tax was undoubtedly imposed on the ginner in an amount which was determined by the tax exemption certificates awarded to petitioner, which in turn was determined by the petitioner's crop history, etc., rather than by circumstances relating to the ginner (see Pet. 23-24). But this does not serve to make the petitioner the one liable for the taxes, or his voluntary payment one which was coerced by the respondent.

The tax, accordingly, was imposed upon the Santo Tomas Gin Company and payment was made on behalf of that company. Yet the petitioner argues that it bore the burden of the tax and that it is, therefore, the real taxpayer. If so, this was a burden taken upon itself, by a voluntary act, and was not one imposed on it by the Act of Congress or by the tax officials. So far as the Government is concerned, the tax was collected from the ginner. The ginner is not a party to this record. It is not at all clear that it would be bound or estopped by any judgment in this proceeding. The claim of the gin company has not and cannot be assigned to the petitioner. See Revised Statutes, Section 3477; *United States v. Gillis*, 95 U. S. 407; *Ball v. Halsell*, 161 U. S. 72. Certainly, the petitioner should not be allowed to recover on an unassigned claim of the ginner when its specific assignment is forbidden. To allow the petitioner to recover taxes assessed against the ginner would mean either that the Government must

accept, at its peril, voluntary arrangements for the payment of taxes made by private persons or must be compelled to litigate the legality of tax collections not with the taxpayer but with a volunteer. Either alternative would seem a dangerous distortion of the accepted methods of tax administration.

In several recent cases the Government has sought to defend against recovery of taxes paid on dues of admission by the club or ticket seller on the ground that in reality the taxpayer was merely a collecting agency. Almost without exception, however, the courts have rejected this contention. Two of the leading cases on this point are *Builders' Club of Chicago v. United States*, 14 F. Supp. 1020 (C. Cls.), and *Alliance Country Club v. United States*, 62 C. Cls. 579. In both of these cases the money used to pay the taxes was furnished by individual members of the clubs. The clubs, however, were required by statute to collect the money and turn it over to the Collector of Internal Revenue. The Government therefore argued, as the petitioner argues here, that the taxes had actually been paid by individual members of the respective organizations and the clubs could not maintain an action for a refund without express authorization of their members. The courts held, however, that the persons made liable by the Act to pay over to the Collector the taxes imposed were the real taxpayers.

In further justification of its position the petitioner argues that if Santo Tomas Gin Company had sued to recover the amount involved it is conceivable that recovery would have been denied because the gin company suffered no injury, since payment was actually made by petitioner, and that a grave injustice will be done if petitioner is denied a recovery. Whether the gin company could have recovered is not involved in this case. Furthermore, it is not shown that petitioner has suffered any injury by payment of the tax, or that it was not fully compensated for that payment when its cotton was sold. So far as the broader equities are material, it may be noted that petitioner received the benefit of higher prices, obtained through crop reduction by its competitors, without reducing its own production.

2. In view of its decision on this question, which we submit is correct, the court below did not err in failing to pass upon questions relating to the constitutionality of the Bankhead Cotton Act. The constitutionality of that Act is the only question involved in *United States v. Lee Moor*, No. 854, present Term, now pending before this Court on petition for certiorari filed by the United States. Questions relating to the validity of the Bankhead Cotton Act are not materially different from the questions relating to constitutionality of the Kerr-Smith Tobacco Act, c. 866, 48 Stat. 1275. That Act was held unconstitutional by the Circuit Court of

Appeals for the Sixth Circuit in *Glenn v. Smith*, 91 F. (2d) 447, and the petition for certiorari, No. 399, present Term, was denied by this Court on March 28, 1938. If similar disposition is made of the petition for certiorari in *United States v. Lee Moor*, *supra*, and if the Court should grant the instant petition for certiorari, the Government suggests that it be limited to the question decided by the court below.

CONCLUSION

The decision of the court below is correct: The Government should not be required to litigate, or to accept at its peril without litigation, voluntary arrangements by which volunteers, against whom the Government has made no claim, seek to stand in the place of the taxpayers designated by law. There is no conflict of authorities. The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. JACKSON,

Solicitor General.

JAMES W. MORRIS,

Assistant Attorney General.

SEWALL KEY,

F. E. YOUNGMAN,

Special Assistants to the Attorney General.

APRIL 1938.

APPENDIX

Bankhead Cotton Act, c. 157, 48 Stat. 598
(U. S. C., Title 7, c. 27):

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent

of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe: The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934-1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

* * *

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processors of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

GENERAL AND PENAL PROVISIONS

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufac-

ture thereof, or has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding \$1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding \$200.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

Treasury Regulations 84 (1935 Edition):

ART. 5. *Measure of the tax.*—The measure of the tax is the number of pounds of lint

cotton resulting from the ginning of seed cotton. The actual weight, or an average representative of the actual weight, of bagging and ties may be deducted as tare in computing the number of pounds of lint cotton resulting from the ginning of seed cotton.

ART. 6. Rate of tax.—The rate of tax on the ginning of cotton is 50 per cent of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. Such average central market price will be determined by the Secretary of Agriculture, and thereafter such rate will be announced by the Commissioner. If the rate is changed, the new rate and the effective date thereof will be announced by the Commissioner.

ART. 7. When tax attached.—The tax attaches upon the ginning of the cotton.

ART. 8. Liability for the tax.—Liability for the tax attaches to the ginner immediately upon the ginning of cotton, except that where payment of the tax is postponed as provided for in article 13, liability for the tax attaches to the producer. (See article 21.)

ART. 9. Exemption from the tax on ginning.—(a) The ginning of cotton harvested during the effective period shall be exempt from the tax to the extent that any cotton so ginned is covered by tax exemption certificates. Cotton tax-exemption certificates are issued to producers of cotton by the Secretary of Agriculture. At the time of ginning, the ginner shall detach coupons from the producers' cotton tax-exemption certificate in an amount sufficient to cover (to the nearest 5 pounds) the amount of lint cotton ginned and contained in each bale or other package.

A cotton tax-exemption certificate presented to a ginner which does not bear the name of the person presenting it, or is not presented by the agent of the person whose name appears thereon, shall not be accepted by the ginner nor shall a ginner accept a detached portion of a cotton tax-exemption certificate except in cases where seed cotton has been sold by the producer and the detached portion presented has on the reverse side thereof or paper attached thereto the following statement signed by the producer: "To cover _____ pounds of seed cotton sold to _____ by _____

(Name of purchaser)

(Signature of producer.)

Any cotton tax-exemption certificates acquired by a ginner in any manner other than that prescribed above will not be accepted by the collector of internal revenue as evidence of exemption from tax.

(b) The ginning of cotton harvested prior to June 1, 1934, is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit from the person who owns the cotton at the time of ginning. The affidavit shall be executed on G. T. Form 106-B, revised, and shall show (1) the name and address of the owner of the cotton, together with the name and address of the producer, if they are different persons, (2) the location of the farm on which the cotton was harvested, (3) the year in which the cotton was harvested, (4) the location of the building where the seed cotton has been stored, (5) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (6) that a bale tag has been attached to each bale.

(c) The ginning of cotton harvested by a publicly owned experimental station or agri-

cultural laboratory is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit signed by a responsible executive officer of such station or laboratory. The affidavit shall be executed on G. T. Form 106-C, revised, and shall show (1) the name and address of such station or laboratory, (2) the location of the land on which the cotton was harvested, (3) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (4) that a bale tag has been attached to each bale.

(d) The ginning of cotton having a staple of $1\frac{1}{2}$ inches in length or longer is exempt from the tax. To be entitled to this exemption, the ginner and the person who owns the cotton at the time of ginning, shall each execute an affidavit on G. T. Form 106-D, revised, which shall state: (1) The location of the farm on which the cotton was produced, (2) the date the cotton was ginned, (3) that the cotton has a staple $1\frac{1}{2}$ inches in length or longer, (4) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (5) that a bale tag has been attached to each bale.

(e) There must be filed with each return on which exemption from tax is claimed under (a), (b), (c), or (d), above, the required affidavit or affidavits, certificate or certificates, as the case may be.

ART. 11. *Returns of ginners.*—Every ginner shall make a return, in duplicate, of all cotton ginned during each calendar month. A separate return, in duplicate, shall be made for each plant where cotton is ginned. The return shall show with respect to each bale or other quantity of cotton ginned during the month the same data required to

be kept in the ginner's record as provided in article 10, and shall account for every bale tag, for every certificate of tagging on G. T. Form 104, revised, and for every lien card on G. T. Form 105, revised, issued to the ginner by the collector as provided in articles 20 and 13. The return on G. T. Form 103, revised, which may be obtained from any collector, shall be filled out in accordance with the instructions contained thereon and in accordance with these regulations. Both the original and the duplicate shall be signed and sworn to before an officer authorized to administer oaths, by the ginner, if an individual, or, in other cases, by an executive officer of the concern. The return (including both original and duplicate) properly filled out, signed, and sworn to shall be filed with the collector for the district within which the place of ginning is situated. The original return shall have securely attached thereto each cotton tax-exemption certificate surrendered by the producer with respect to cotton ginned during the month, and all affidavits required by articles 9 and 13, and together with the duplicate return shall be filed on or before the last day of the month following the month for which the return is made. The ginner shall tender with his return to the collector a remittance to cover the amount of tax due on the ginning of all cotton during the month other than that with respect to which exemption certificates are surrendered, or affidavits are filed.

If the last day of the month on which the return is due falls on Sunday or a legal holiday, the return may be filed on the next following business day.

A return must be filed with the collector for each month whether or not tax liability has been incurred for that month.

If a ginner ceases business, his last return must be marked "final return."

ART. 12. *Payment of ginning tax.*—The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

ART. 13. *Postponement of time of payment.*—(a) If a producer intends to store lint cotton resulting from a ginning of cotton produced by him, either on his farm or at such other place as provided for in (b), below, the tax shall not be collected upon the ginning of such cotton, but payment may be postponed until the time fixed for the producer to file his return covering such cotton. (See article 21.) Until such return is filed and the tax is paid, exemption certificates covering the cotton are surrendered, the cotton in such bales shall be subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton. This lien shall be prior to all other liens, claims, or demands of any nature whatsoever.

The ginner who gins such cotton shall obtain from the producer an affidavit, executed in triplicate, on G. T. Form 106-A, revised, showing (1) the ginner's name, (2) the name and address of the producer, (3) the place where the cotton was produced, (4) the date on which the cotton was ginned, (5) the place where the lint cotton is to be stored, (6) the number of bales of lint cotton and the weight of lint cotton contained in each bale, and (7) the serial number of

the lien card attached to each bale. One copy of this affidavit shall be attached to the return filed for the month within which the ginning was done, one copy shall be retained by the ginner, and the third copy shall be retained by the producer.

The ginner shall attach to each such bale of lint cotton a lien card on G. T. Form 105, revised, bearing a serial number, which shall be filled out in accordance with the instructions contained thereon. This card shall show the time of ginning, the weight of lint cotton contained in the bale, and the amount of tax due. The lien card will contain a statement to the effect (1) that the cotton is subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton, and (2) that any person who transports (except to the place of storage), sells, purchases, or opens this bale of cotton before a bale tag issued under the Act is attached thereto is liable to a fine not exceeding \$1,000, or to imprisonment for not exceeding six months, or both. Such lien card shall not be removed from the bale until a bale tag has been procured and attached thereto. Lien cards may be obtained from any collector. For provisions relating to filing of returns by producers and payment of tax, see article 21.

(b) *Conditions under which untagged cotton may be stored elsewhere than on the farm on which produced.*—In any case where the producer of lint cotton harvested and ginned after May 31, 1934, desires to store one or more bales of such cotton elsewhere than on the farm on which it was produced, without at the time of ginning procuring bale tags therefor, and he has at such time no tax-exemption certificate with which to procure

bale tags, he may store such cotton subject to the following conditions:

(1) Such cotton may be stored only in an approved warehouse (see article 2 (q)) located either within or without the county and state in which the cotton was produced;

(2) All such cotton of a producer shall be stored in one approved warehouse selected by the producer;

(3) The requirements of (a) above shall be fully complied with by the producer and the ginner who ginned such cotton;

(4) Both the affidavit and the lien card required by paragraph (a) above shall show the name and location of the warehouse in which the cotton is to be stored;

(5) No bale so stored shall be sold or removed from such approved warehouse for any purpose until a bale tag has been attached to such bale; and

(6) All bales so stored shall be segregated in such warehouse from all bales to which tags are attached.

ART. 16. Transportation, purchase, or sale of lint cotton.—No person shall transport or cause to be transported after July 1, 1934, any lint cotton to which a bale tag issued under the Act is not attached except (a) within the boundaries of the county where produced; (b) for the purpose of storage by the producer, in accordance with article 13; (c) a bale imported and held in customs custody or control (see article 22); (d) for export if the bale tags have been removed as provided in article 30; (e) in the form of bona fide samples in small containers; (f) after it has been put in process.

No person shall purchase or sell a bale of lint cotton unless there is attached thereto a bale tag issued under the Act, and unless the seller of the cotton delivers to the pur-

chaser at the time of the sale a certificate of tagging, G. T. Form 104, revised; provided, however, that warehouse receipts for bales of lint cotton harvested and ginned prior to June 1, 1934, and stored in a warehouse on August 1, 1934, may be purchased and sold if the warehouseman has executed the bond required by the regulations of the Secretary of Agriculture (R. 21, B. A. R. Series No. 1) and has in his possession bale tags and certificates of tagging for the cotton represented by the warehouse receipt or receipts. A bale tag shall be attached to, and a certificate of tagging issued for, each such bale of cotton before it is removed from the warehouse.

No person shall open or break a bale of lint cotton that does not have attached thereto a bale tag issued under the Act, and for which the owner does not have in his possession a certificate of tagging, unless such lint cotton was, on July 1, 1934, held by the owner on the premises where the cotton is to be processed, and the bale is opened on such premises.

For provisions relating to penalties, see article 37.

ART. 21. Returns of producers.—Every producer who has had cotton returned to be stored by him in accordance with the provisions contained in article 13 shall, at least 15 days prior to transporting, selling, or opening any bale of such cotton, file a return on G. T. Form 107, revised.

The return (including both original and duplicate), properly filled out, signed, and sworn to, shall be filed with the collector of internal revenue for the district in which the cotton was ginned. The return shall state the place where the cotton is stored, the number of bales of cotton for which bale

tags are desired, and the total weight of lint cotton contained in each bale. There shall accompany the return that duplicate copy of the producer's affidavit which was retained by such producer at the time the cotton was ginned. (See article 13.)

If the producer desires bale tags for only a portion of the cotton covered by such affidavit, the return shall cover only such portion, and the collector shall make proper notation on the affidavit and return it to the producer. The affidavit shall be forwarded to the collector each time a return is filed with respect to any part of the cotton covered by such affidavit. When a return or returns have been filed for the total quantity of cotton covered by such affidavit, the collector shall retain the affidavit.

At the time of filing the return, the producer may surrender exemption certificates covering any part of the cotton covered by the return, and shall pay the tax on any part of such cotton not covered by such exemption certificates. Bale tags will thereupon be issued to such producer to identify the bales of lint cotton covered in the return. Each tag when received should be attached to the bale of lint cotton for which it is issued. At the time such bale tags are issued to the producer, certificates of tagging, one for each bale tag, shall be issued by the collector to the producer, who shall be notified by the collector that without such certificate and tag the bale of lint cotton can not be sold or broken or opened. (See article 16.)

The collector shall keep an accurate record of bale tags and certificates of tagging issued under this article, together with the serial numbers of such certificates.